

Patent  
10/785,389

**REMARKS**

Claims 1-9 are pending in the application. Claims 1 and 3 have been amended herein. Claim 1 is the only independent claim.

Restriction was required to the following allegedly distinct inventions:

- I. Claims 1-9, drawn to a device for use in controlling the temperature of a patient, classified in class 607, subclass 106.
- II. Claims 10-13, drawn to a method of making the device, classified in class 249, subclass 197.

Paragraph 2 of the Office Action indicates that the inventions are distinct as "the process as claimed can be used to make a variety of different products".

In response to this requirement, Applicants telephonically elected the Group I claims, Claims 1-9, without traverse, for initial prosecution on the merits. This election is hereby affirmed.

Claim 3 was rejected under 35 USC 112, second paragraph, as indefinite. The issue raised in the Action has been addressed in the foregoing amendments to Claim 3. Reconsideration and withdrawal of the rejection of Claim 3 are respectfully requested.

Claims 1-5 and 7-9 were rejected under 35 USC 102(b) as anticipated by US Patent 6,224,624 (Iashcras et al.) and Claims 1, 4 and 6 were rejected as being anticipated by US Patent 6,254,626 (Dobak III et al.). In view of the foregoing claim amendments and the following discussion, each of the rejections is respectfully traversed and reconsideration is requested.

Independent Claim 1 is directed to a heat transfer device for intravascular temperature control of a patient, including a flexible layer of a substantially conductive material, the flexible layer having in part the shape of a helical groove, and shaped and configured such that the flexible layer *lacks an undercut and* may be removed from a multi-part mold.

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Both Lasheras and Dobak fail to teach or suggest a device that can be removed in the absence of an undercut. As described at least at page 31, lines 7-27 of Applicant's application, as filed, in the prior art devices, the heat transfer elements included an undercut, which prevented the heat transfer element from being "lifted up in the direction indicated by arrow 310" (Figure 22). However, in accordance with a heat transfer device as claimed, and as shown in one particular embodiment of Figure 23, "part 304" does not have an undercut" and therefore "can be lifted up, in the direction indicated by arrow 310". Again, neither Lasheras nor Dobak teach or suggest a device shaped and configured in the manner claimed herein.

For at least the foregoing reason, independent Claim 1, as amended herein, is believed patentable over the art of record.

Dependent Claims 2-9 are believed to be clearly patentable for all of the reasons indicated above with respect to Claim 1, from which they depend, and even further distinguish over the cited references by reciting additional limitations.

It is respectfully submitted that all pending claims are now in condition for allowance and prompt review and issuance is accordingly requested. Should the Examiner be of the view that an interview would expedite consideration of this Amendment or of the application at large, request is made that the Examiner telephone the Applicants' undersigned attorney at (908) 518-7700 in order that any outstanding issues may be resolved.

Respectfully submitted,

  
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